MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Legislative Fiscal Analyst
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DATE: July 10, 2000

TO: Legislative Finance Committee

FROM: Lois Steinbeck

RE: DPHHS Supplemental Appropriation

INTRODUCTION

The Department of Public Health and Human Services (DPHHS) has submitted a request to the Office of Budget and Program Planning for a supplemental appropriation to move $4 million general fund and $8 million federal funds from fiscal 2001 to fiscal 2000. The request was submitted the evening of July 7 and will be reviewed at the Legislative Finance Committee (LFC) conference call meeting July 11.

MOST SIGNIFICANT SHORTFALLS

The most recent DPHHS budget status report (based on April expenditures) shows a net general fund cost over-run of just over $4 million for the agency. Several programs within DPHHS are projecting cost over-runs, but mental health services is the most significant with about $4.1 million. Cost over-runs in the Montana State Hospital, mental health Medicaid, and Mental Health Services Plan (MHSP) programs are projected to be about $4.9 million. Savings in general fund costs at the Montana Mental Health Nursing Care Center and division administration partially offset the total shortfall.

The second most significant shortfall is $1.1 million general fund in the foster care services administered by the Child and Family Services Division (CFSD). That shortfall is being covered by unexpended funds in the Children's Health Insurance Program (CHIP) appropriation. The projected shortfall in CFSD administrative costs was reduced from $3.2 to $1.1 million because DPHHS is estimating that final cost allocation results will produce another $2.1 million in general fund savings. If cost allocation results are different than the agency expects, CSFD shortfalls could be higher than $1.1 million. LFD staff has requested information on the status of cost allocation.

The third most significant shortfall is about $600,000 in the state maintenance of effort (MOE) required for the federal Temporary Assistance for Needy Families Block (TANF) Grant. DPHHS also anticipates covering this deficit with unexpended CHIP funds.

ISSUES

The following issues are raised for LFC consideration:

- Documentation of the proposed supplemental, statutorily required plan to reduce expenditures, and the documentation supporting cost reductions was not available in a timeframe that allowed a thorough analysis and review of the proposal as required by statute;
- Preliminary evaluation identified several points of the cost reduction plan that could shift costs from the mental health services budget to other budgets potentially causing higher general fund outlays than the savings projected for mental health services;
- Legislative staff previously identified ways to offset mental health services general fund costs that may be alternatives to direct service reductions, but are not addressed in the plan to reduce costs;
- The projected supplemental could be higher because the most recent DPHHS budget status report assumes: 1) final cost allocation results will offset general fund foster care administrative costs by $2.1 million; and 2) $1.9 million in general fund appropriated for the Children's Health Insurance Program (CHIP) will be applied to cost over-runs in other programs.

Statutory Authority

Section 17-7-301, MCA establishes the authority of the Governor (for executive branch agencies) to approve an agency's request to spend during the first year of biennium from appropriations made for second year of the biennium. The Governor must determine that due to an unforeseen and unanticipated emergency, funds appropriated for the first year of the biennium will be insufficient to cover costs incurred during that year.

The Legislative Fiscal Analyst must prepare a written review of the proposed supplemental appropriation. Statute also requires that all supporting documentation for the proposed supplemental be forwarded to the Fiscal Analyst (section 17-7-311(1), MCA. The LFC must review proposed supplemental appropriation and may provide a written report to the Governor within 10 days after the review. If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the Fiscal Analyst may waive the written review and the LFC written report required by this section. After a waiver, the Analyst may complete the written review.

The Governor may not approve a proposed supplemental appropriation until he receives the LFC written report. However, if the LFC report is not received within 90 calendar days from the date the proposed supplemental appropriation and supporting documentation were forwarded to the LFC, the Governor may approve the proposed supplemental appropriation. The Governor may also approve a proposed supplemental request if the LFC review has been waived.

Background of Supplemental Request

At the June 9 and 10 LFC meeting, DPHHS staff testified that recent budget estimates showed a fiscal 2000 general fund shortfall up to $4.2 million. DPHHS staff testified that the majority ($3.6 million) of the cost overrun was in mental health services and the cost overrun was allocated about equally among the MSH, Medicaid, and Mental Health Services Plan (MHSP) programs.

The LFC must report to the Governor before he can approve a request for a supplemental appropriation. If no report is received or the Legislative Fiscal Analyst has waived the reporting requirements due to the existence of an emergency, he has 90 days before he can take action on the request. Although DPHHS advised the LFC in June that it would probably experience a fiscal 2000 general fund shortfall, it did not request a supplemental appropriation until June 14, which did not allow for review by the LFC at its regularly scheduled meeting. That request was withdrawn on June 20 and a substitute request was made to transfer $4 million of the $8 million biennial general fund CHIP appropriation to cover the shortfall in mental health services programs in fiscal 2000. The June 20 request also established a new appropriation for fiscal 2001 CHIP expenses from $4 million general fund transferred from fiscal 2001 mental health services appropriations.

The Office of Budget and Program Planning (OBPP) preliminarily approved both requests. The transfer was in excess of $1 million and therefore subject to provisions of section 17-7-139, MCA. OBPP determined that the transfer was time sensitive and needed to be implemented prior to the next LFC meeting in October. Legislative Fiscal Division (LFD) staff reviewed the transfer in compliance with 17-7-139, MCA.

Legislative staff identified several issues related to the proposed CHIP transfer and notified OBPP and DPHHS. Subsequently, the executive decided to withdraw the program transfer and reinstate a request for a supplemental appropriation.

As noted previously, statute requires the Fiscal Analyst to prepare a written review of all proposed supplemental appropriations and statute provides that all supporting documentation be forwarded to the Fiscal Analyst. Because timeframes became highly compressed, the review is not thorough or complete.

Plan to Reduce Expenditures

DPHHS has submitted a plan to reduce or offset the general fund cost of mental health services by $8 million in fiscal 2001. Table 1 shows each proposal, projected general fund cost savings, and the number of persons affected, if known or applicable.

Table 1
Mental Health Budget Reduction Plan - 2001 Biennium

Proposal	Estimated Savings	Percent of Total	Eligibles Affected
Suspend MHSP Eligibility Through Fiscal 2001	$ 2,100,000	26%	1,400
Reduce MHSP Financial Eligibility to 120% of Poverty	2,000,000	25%	725
MSH Contractor Delay Penalty	1,070,000	13%	None
Stricter Utilization Management	1,000,000	12%	Unknown
Partial Hospitalization Rate Decrease/Site Must be at Inpatient Hospital Site	637,500	8%	Unknown
Require SDMI and SED Medical Necessity to Receive Medicaid Funded Mental Health Therapy	400,000	5%	Unknown
Move 25 MSH Patients to PACT	250,000	3%	25
Forego Fiscal 2001 Provider Rate Increase	250,000	3%	Unknown
Cancel Frontier Rate Increase	210,000	3%	Unknown
Additional Consumer Co-pay for Counseling Services	100,000	1%	All
Total	$ 8,017,500	100%	

Over one half of the proposed reductions in eligibility and services affect the state funded MHSP plan, although DPHHS estimates that cost over-runs will occur in the MSH and Medicaid programs as well. Eligibility and service reductions to MHSP account for at least 55 to 60 percent of the total reduction compared to 40 percent of the total cost over-run.

The two most significant reductions account for just over half of the total. Suspending MHSP eligibility through fiscal 2001, beginning August 1, 2000, is estimated to save $2.1 million general fund and affect 1,400 individuals. The second most significant proposal limits ongoing MHSP eligibility to individuals with incomes no greater than 120 percent of the federal poverty level ($20,460 for a family of four). Limiting financial eligibility is estimated to reduce expenditures by $2 million and would affect 725 individuals.

Penalties assessed against the contractor for delays in construction of the new state hospital offset $1.1 million of the general fund shortfall. Enhanced utilization review, increased use of in-home services, and tightening clinical eligibility are estimated to reduce expenditures by another $1 million.

The remaining 6 reductions account for 25 percent of the total and include: foregoing the fiscal 2001 provider rate increase, a rate reduction for partial hospitalization services, and the frontier rate differential promised rural providers; reimbursement only for partial hospitalization services located at an inpatient hospital site; increased consumer co-payments; development of community services to move patients out of the Montana State Hospital (MSH); and implementation of clinical eligibility criteria to receive outpatient therapy services for Medicaid eligible persons.

DPHHS staff met with Governor Racicot July 7 to brief him on the plan. During that meeting, DPHHS staff recommended that the Governor seek a supplemental for part of the cost over-run.[1]

ISSUES

LFD staff have identified several issues related to the proposed supplemental. However, please be advised that the extremely short timeframes have not allowed a thorough review of the proposed reductions.[2]

Increased General Fund Costs

As DPHHS noted in its presentation of the proposed service reductions to the Mental Health Oversight Advisory Council on July 10, there are negative consequences to nearly each item in the plan to reduce mental health services costs. While this report focuses on the budgetary aspects of service reductions, it should be noted that individuals will lose access to services and the personal cost to those individuals cannot be quantified.

Several of the proposed service reductions may increase general fund costs at MSH and in other programs and agencies. For instance, proposals that reduce eligibility or limit services for adults who have a serious and disabling mental illness (SDMI) and who are currently supported in the community could lose services and be committed or recommitted to MSH. Such a result could result in a upward cost spiral if DPHHS further reduces eligibility for services that maintain adults in the community in order to pay increased MSH costs.

Likewise, there are some children who are seriously emotionally disturbed (SED) in families with incomes between 120 and 150 percent of the federal poverty level that could lose services. Some of the children who lose MHSP eligibility may also be eligible for the Children's Health Insurance Program (CHIP), and would be able to continue to access a more limited set of mental health services.

[1] Laurie Ekanger, Director, Department of Public Health and Human Services, comments to the Mental Health Oversight Advisory Council, July 10, 2000.
[2] For instance, the documentation supporting the cost reduction estimates was received at noon on July 10.

However, children who lose MHSP eligibility and are entitled to receive mental health services through an individual education plan (IEP), would still receive services, but the cost of serving children would shift from DPHHS to schools. The same cost shift would apply to any children in foster care or juvenile corrections who receive MHSP services. If children are able to remain in their home because they are eligible for MHSP services and they lose those services, there could be an increase in foster care or juvenile corrections costs.

Limiting Medicaid reimbursement for outpatient therapy to adults with SDMI and SED children could also cause a cost shift to the general fund. For instance, the LFC subcommittee studying mental health services has received testimony that persons who are developmentally disabled periodically need mental health services. If that person is Medicaid eligible, but is not SED or SDMI, the cost of outpatient therapy mental health services provided would shift from Medicaid funds (funded 28 percent general fund and 72 percent federal funds) to the general fund. The same could be true for persons eligible for cash assistance who need short term, out patient mental health services. Examples might include persons who experienced physical abuse. If therapy provided was a non medical service, federal TANF block grant funds could be used. If a separate state program funded by state MOE funds was created, state MOE could be used to fund medical and non-medical services provided to needy families. However, if TANF funds are not used to fund non-medical services and a separate state program funded by state MOE is not established, costs will shift from Medicaid to general fund.

Information received from DPHHS states that there are five partial hospitalization programs which will no longer receive funding due to the requirement that only programs located on a hospital campus will be eligible for Medicaid or MHSP payment. The five sites not located on a hospital campus include providers in Bozeman, Billings, Polson, Great Falls, and Butte. Of these five communities only Billings currently has partial hospitalization services available on a hospital campus. Possible ramifications of the elimination of partial hospitalization programs at non hospital sites are: 1) a potential cost shift from Medicaid to general fund foster care and juvenile justice budgets if children remain in services; or 2) that children who are currently able to remain at home and receive services in their community may have to be placed out of their home and in settings where services are available.

Finally, there will be some cost shift to local governments if the state no longer funds services for individuals with incomes between 120 and 150 percent of poverty. For instance, local governments could experience increased costs to MSH commitment proceedings.

Other Potential General Fund Offsets

DPHHS has included one potential source of funding to offset general fund costs, thereby mitigating some service reductions - penalties assessed for delays in construction of the new state hospital. However, the cash is not anticipated to be received during fiscal 2000 or potentially not even prior to the end of the 2001 biennium.

There are other general fund offsets that have been identified by the LFC subcommittee studying public mental health services that could reduce the amount of service reductions needed to cover

the mental health budget shortfall. The LFC may wish to discuss these other potential offsets in relation to the offsets identified by DPHHS.

Federal CHIP Funds

DPHHS has testified before the LFC subcommittee studying public mental health services that CHIP is not routinely considered a prior resource for MHSP. In other words, when a child is eligible for both MHSP and CHIP, services covered by CHIP should be reimbursed by CHIP first and then to MHSP as a payor of last resort. CHIP is funded 80 percent from federal funds and 20 percent from state funds, while MHSP is funded fully from the general fund. LFD staff have asked DPHHS whether it is researching how many services for dual eligible children have been paid from MHSP without billing CHIP when appropriate.

DPHHS could expand the use of federal CHIP funds by paying 80 percent of the general fund cost of all MHSP services provided to children who are eligible for both CHIP and MHSP. Currently CHIP includes a mental health services component, but coverage is more limited than MHSP. This action could be funded from the 2001 biennium federal CHIP appropriation and could be accommodated within the current state plan without an amendment. It could be handled as a carve out, similar to the way CHIP funds dental services, so it would not impact the CHIP premium cost. Since computer systems should already be set up to bill CHIP first and MHSP second, it should also be possible to program a funding change that bills CHIP for all mental health services for dual eligible children.

Using federal CHIP funds to match all mental health services costs for children who are also eligible for MHSP does have an important policy component, however. CHIP is funded from a five year fixed federal grant. So any federal CHIP funds used to pay for mental health services will reduce the federal funding available to provide health care coverage for other children.

TANF and State MOE

There are two mutually exclusive ways that TANF and state MOE for the TANF block grant can be used to offset MHSP general fund costs. Non-medical mental health services may be funded with federal TANF funds if the services provided fulfill one of the four goals of the TANF program as specified in federal regulations. The final TANF rules clarify that the state may have different eligibility criteria for different programs and services provided as part of the TANF program. Services provided with TANF funds may only be provided to families.

State MOE funds spent in a separate state program (and not commingled with TANF funds) may be used to provide medical and non-medical services to needy families. However, state MOE funds cannot also be used to draw down other federal funds unless specifically allowed by federal regulations. Therefore, if MHSP expenditures were used toward state MOE they can not also be used to draw down the federal mental health services block grant.

DPHHS has not included the CHIP, TANF, and state MOE general fund cost offsets. LFD staff has requested that DPHHS provide any documentation it has that would estimate the potential general fund savings of these offsets.

Use of Unexpended CHIP General Fund Appropriation

Legislative staff clarified that DPHHS could use unexpended general fund from the $8 million biennial general fund appropriation for CHIP and Medicaid expansion due to CHIP outreach authorized by Senate Bill (SB) 81. Once the conditions of the appropriation established in SB 81 are fulfilled, DPHHS can transfer any remaining general fund to other uses.

The most recent budget status report shows $1.9 million of the CHIP general fund appropriation available to cover shortfalls in fiscal 2000 in primary care Medicaid, state MOE for the TANF block grant, and foster care costs. LFD staff has requested the DPHHS documentation used to establish the estimate of how much general fund CHIP authority would remain unexpended. This documentation is necessary before any CHIP funds can be transferred for other uses according to the Director of Legal Services of the Legislative Services Division. Unless DPHHS can document fulfillment of the conditions attached to the appropriation, the fiscal 2000 general fund cost over-run could be increased by $1.9 million. However, if DPHHS has documented excess general fund in the CHIP appropriation in fiscal 2001 as well as fiscal 2000, some of the excess CHIP funding it could be applied to offset mental health services costs.

LFC OPTIONS

The LFC has two options regarding action on the proposed supplemental appropriation. It can choose to:

1. File a report with the Governor; or

2. Not file a report with the Governor. If no report is filed, the Governor cannot act on the proposed supplemental appropriation for 90 days.

If the LFC chooses to file a report with the Governor it can include all or any of the following issues:

A. The time constraints were such that an adequate analysis could not be performed and some information necessary to report on the proposed supplemental is not available in order to make an informed decision.

B. Preliminary observations of the proposed supplemental indicate that:

i. DPHHS could implement one or more of the following actions to offset general fund mental health service costs rather in order to minimize

service reductions. (Please note that items c. and d. are mutually exclusive.)

a. Use federal CHIP funds to pay about 80 percent of MHSP services for dual eligible children; and

b. Use excess fiscal 2001 CHIP general fund authority to offset MHSP service costs; and

c. Use federal TANF authority to fund non-medical mental health services costs provided to MHSP persons; or

d. Use MSHP expenditures toward the TANF MOE.

Whether or not the LFC chooses to report to the Governor, it may wish to consider other direction to staff and DPHHS.

I. The LFC could request that DPHHS provide the documentation showing its estimates for the following topics and that LFD staff review the documentation and report back to the LFC. The topics include:

A. CHIP general fund authority that will be expended for CHIP and Medicaid expansion due to CHIP outreach;

B. Final cost allocation results for CSFD administrative costs;

C. How many children are potentially eligible for both CHIP and MHSP that are only currently eligible for MHSP;

D. How much general fund cost could be offset if CHIP were considered a prior resource for all mental health services costs paid by MHSP for: 1) all children who were dually eligible during fiscal 2000 and received MHSP services; and 2) if CHIP was a prior resource for all MHSP services for dual eligible children.

ATTACHMENT 1

Mental Health Budget Reduction Plan
2000-2001 Biennium

PROGRAM CHANGES	Estimated General Fund Savings
1. Suspend MHSP Eligibility Through FY2001. Effective 8/1/00, no new members will be enrolled in the Mental Health Services Plan	$2,100,000
2. Stricter Utilization Management. A number of new and revised utilization management activities will be instituted including, but not limited to, revised clinical placement criteria, revised clinical eligibility criteria, increased consideration of alternatives to out-of-home placement, possible service limits on adult services, ongoing retrospective reviews of outpatient services, reviews of eligibility determinations.	$1,000,000
3. Cancel Frontier Rate Increase. A rate increase for some services in frontier counties (fewer than 6 people/sq. mile) was promised to mental health centers in order to cover higher cost in rural areas. This increase will not be implemented.	$ 210,000
4. Partial Hospitalization Rate Decrease/Reduced Sites. Partial hospitalization programs will be required to be located at the inpatient hospital site. Rates will be reduced by 25%.	$ 637,500
5. No Mental Health Provider Rate Increase in 2001.	$ 250,000
6. Reduce MHSP Financial Eligibility to 120% of Federal Poverty Level. Effective 9/1/00, membership in Mental Health Services Plan will require income below 120% of poverty ($20,460 for a family of four). Eligibility of those with higher incomes will be cancelled as of 9/1.	$2,000,000
7. Require Additional Consumer Co-Pay. A $5 per service co-pay will be required under MHSP for psychology, social work, and professional counseling services.	$ 100,000
8. Move 25 MSH Patients to Community ACT. Alternative services to achieve a long-term patient census reduction at Montana State Hospital will be implemented. Savings are net of implementation costs.	$ 250,000
9. Make SED and SDMI Medical Necessity Criteria for Mental Health Therapy Services. Require that Medicaid recipients meet the criteria for Severe Emotional Disturbance or Severe and Disabling Mental Illness in order to receive Medicaid funded outpatient services.	$ 400,000
10. MSH Building Delay Contractor Penalty. A penalty has been assessed to the MSH contractor for construction delay.	$1,070,000
TOTAL	**$8,017,500**

Source: Department of Public Health and Human Services

Appendix
Legislature Identified Budget Shortfall During 1999 Session

The Joint Appropriations Subcommittee on Human Services and Aging identified two areas where the executive mental health general fund 2001 biennium budget request appeared to be too low. Both were related to the MSH budget.

First, DPHHS funded part of the MSH budget by increasing fees charged to the mental health managed care contractor above the average daily cost of services. When the managed care contract was terminated, lack of contractor payments left the MSH budget with $1.8 million of costs over the biennium for which there was no funding. The shortfall had to be made up through reductions in other general fund services, most notably in reductions to the amount appropriated for MHSP.

Second, DPHHS submitted an MSH budget request based on an average daily population (ADP) of 135. During the session, the MSH population ranged between 155 and 170. The subcommittee requested that DPHHS present its plan to reduce the MSH population. DPHHS did not have a specific plan, other than a plan it had requested that the mental health managed care contractor develop. The ADP for MSH has ranged from a low of 144 to a high of 173, with an average of 158 through May of fiscal 2000. The increased ADP has resulted in cost over runs of at least $1 million general fund.